CORRECTED COPY

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-728

STAR SHIPPING A/S,
the Motorship STAR CLIPPER and
BUCHANAN SHIPPING CO., INC.,
Petitioners,

v.

PACIFIC LUMBER & SHIPPING COMPANY, INC., et al.,
Respondents.

PETITION

FOR WRIT OF CERTIORARI

to the
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CRAFTSMAN PRESS SEATTLE, WASHINGTON

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in Case No. 79-4225, entered on August 14, 1979.[1]

1. In addition to Pacific Lumber & Shipping Co., Inc., the respondents are Heidner International Corporation, R. W. Export, Ltd., Intercontinental Lumber Company, Boise Cascade Corporation, Publisher's Forest Products, Inc., The Windsor Company, Dant & Russell, Inc., Patrick Lumber Company, Columbia Harbor Lumber Company, Georgia-Pacific Corporation, Big Bay Timber, Ltd., North Pacific International, Inc., Zenith Lumber Company, Inc., Oregon Pacific Industries, Merrill Lynch Wood Markets, Inc., Tree Products Company, Inc., American & Tropical Forest Products Company, Inc., Fireman's Fund Insurance Company, Northwestern National Insurance Company, Royal Globe Insurance Company, Centennial Insurance Company, and Hartford Fire Insurance Company.

OPINIONS BELOW

The order of the district court is reported at 464 F. Supp. 1314. There was no opinion in the Court of Appeals for the Ninth Circuit; its order dismissing petitioners' appeal was not reported. Both orders are reprinted in Appendix A hereto.

JURISDICTION

On August 14, 1979, the court of appeals entered its order affirming the judgment of the district court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether compliance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards requires that an order denying a stay of an admiralty suit pending arbitration be appealable under 28 U.S.C. § 1291 or 28 U.S.C. § 1292(a)(1)?

STATUTES AND TREATY INVOLVED

The court of appeals jurisdictional statutes, 28 U.S.C. §§ 1291 and 1292(a)(1), appear in pertinent part at page five.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides, in pertinent part:

ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

The provisions of the Federal Arbitration Act, Title 9, United States Code, which implement and apply to the Convention, appear in Appendices B and C.

STATEMENT OF THE CASE

This is an action in admiralty by shippers and cargo insurance underwriters arising from loss of cargo overboard during a storm in the Mediterranean. This petition results from an order dismissing petitioners' appeal from the district court's order denying petitioners' motion for a stay pending arbitration.

Shipments of lumber were loaded on deck aboard the motorship STAR CLIPPER at Coos Bay, Oregon, in October 1978, and were lost overboard in November 1978 while the ship was proceeding toward Livorno, Italy, its first port of call. There were eighteen shippers, all of them in business in Oregon, Washington, or California, and some forty consignees at Livorno and Naples, Italy, and at Barcelona, Spain. The ship was owned by the claimant Buchanan Shipping Co., Inc., of London, England, and was operated by Star Shipping A/S of Bergen, Norway.

Some ninety bills of lading were issued by the carriers. All of them were endorsed on the face with the following typewritten words:

ALL DISPUTES ARISING UNDER THIS BILL OF LADING SHALL BE SETTLED IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION ACT OF 1950 IN LONDON. THE AWARD OF THE ARBITRATORS OR UMPIRE TO BE FINAL AND BINDING UPON BOTH PARTIES.

On February 8, 1979, the shippers and five insurance companies filed a complaint in federal district court in Seattle, against Star Shipping A/S and the motorship STAR CLIPPER. They alleged admiralty jurisdiction and said they were bringing this action on their behalf and on behalf of the consignees as well. They claimed a loss of $750,000.

On February 12, Buchanan Shipping Co., Inc. filed a claim as owner of the vessel and a motion to stay the action pending arbitration in London. On February 14, Star Shipping A/S joined in the motion and submitted a memorandum of authorities in support of the contention by both parties that they were entitled to a stay order under the terms of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards as implemented in Chapter 2 of the Federal Arbitration Act, 9 U.S.C. §§ 201 *et seq*.

On February 15, the district court heard the motion and denied it. At that time, the district judge stated that he did not intend to make a written order. On the basis of that statement, petitioners filed a notice of appeal and designation of the record the following day.

On February 16, respondents prepared and lodged a proposed order stating reasons for denying the stay, which was ultimately signed by the district court and filed on February 26. This order is reprinted in Appendix A hereto.

On May 12, the respondents filed a motion in the Court of Appeals for the Ninth Circuit to dismiss the appeal, contending that the order denying the stay was non-appealable. On May 18, petitioners filed a response contending that the order was appealable, and at the same time filed an alternative motion for leave to file a petition for writ of mandamus. On August 14, 1979, the court of appeals entered its order, without opinion, in which it dismissed petitioners' appeal for lack of an appealable order, and declined to treat petitioners' appeal as a petition for a writ of mandamus. This order is also reprinted in Appendix A.

REASONS FOR GRANTING THE WRIT

I. The Holding of the Court of Appeals Raises an Important Question of Federal Procedure

Title 28 U.S.C. § 1291 provides, in pertinent part:

> The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . except where a direct review may be had in the Supreme Court.

Title 28 U.S.C. § 1292(a)(1) provides, in pertinent part:

> (a) the courts of appeals shall have jurisidiction of appeals from:
>
> (1) interlocutory orders of the district courts of the United States, . . . or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, except where a direct review may be had in the Supreme Court; . . . .

The jurisdiction of the courts of appeals under this section is quite properly determinable by this Court. *Switzerland Cheese Assoc., Inc. v. Horne's Market Inc.*, 385 U.S. 23 (1966).

II. The Holding of the Court of Appeals Vitiates an International Convention to which the United States is a Party

Under 28 U.S.C. § 1292(a)(1) and its predecessor, an appeal will lie from an order granting or denying a stay

of an action at law pending determination of an equitable defense or counterclaim. *Enelow v. New York Life Insurance Co.*, 293 U.S. 379 (1935). Where the original claim was equitable, however, the order was held to be non-appealable. *Baltimore Contractors, Inc. v. Bodinger*, 348 U.S. 176 (1955).

The distinction is based on a two-part analysis. First, a stay is interpreted to be an injunction, appealable under 28 U.S.C. § 1292(a)(1), if the proceeding stayed is in another court.

Second, on the basis of the fictional distinction between the equity and law "sides" of federal district courts, a stay, although within one court and one proceeding, is said to be a stay by one court of another when the equity "side" stays the law "side." *Enelow v. New York Life Insurance Co., supra.* The stay of an action on the equity "side" pending determination of a legal or equitable defense or counterclaim, however, is merely a docket adjustment because just as a court of equity does not stay itself, the equity "side" does not stay itself. *Baltimore Contractors, Inc. v. Bodinger, supra.*

Following the *Enelow* reasoning, this Court specifically held appealable an order granting or denying a stay of an action at law pending arbitration. *Shanferoke Coal & Supply Corp. v. Westchester Service Corp.*, 293 U.S. 449 (1935). As in *Enelow*, the Court equated such an order to the grant or denial of an injunction.

When the order granting a stay pending arbitration was entered in admiralty, however, a different result was reached. *Schoenamsgruber v. Hamburg American Line*, 294 U.S. 454 (1935). In holding such an order to be non-

appealable, the Court noted that courts of admiralty do not have general equitable jurisdiction and, except in limitation of liability proceedings, do not issue injunctions. *Id.* at 457.

This result has been described as "anomalous . . . , based on historical distinctions rather than on policies relevant to the desirability of allowing interlocutory appeals," *Penoro v. Rederi A/B Disa*, 326 F.2d 125 (2d Cir.), *cert. denied sub nom. Rederi A/B Disa v. Cunard S.S. Co.*, 389 U.S. 852 (1967), and as an "incongruity" which "springs from the persistence of outmolded procedural differentiations," *Baltimore Contractors, Inc. v. Bodinger*, 348 U.S. at 184-85.

Mr. Justice Black, in addressing this same issue, wrote:

> An order should be appealable within the meaning of this statute if in substantial effect it is equivalent to an injunction, and as a matter of fact we have so held. *Ettelson v. Metropolitan Insurance Co.*, 317 U.S. 188, 87 L. Ed. 176, 63 S. Ct. 163 (1942). . . . I think the time has come to abandon this outmoded fiction about "sides of the court" and return to the sound principles announced in *Ettelson, supra.* Here as in *Ettelson* petitioner is "in no different position than if a state equity court had restrained [it] from proceeding in [a] law action."

Rederi A/B Disa v. Cunard S.S. Co., 389 U.S. 852, 853 (1967) (dissent to denial of certiorari). Mr. Justice Black concluded his dissent by declaring that he "would grant the writ, reverse the judgment below, and require a ruling now on *the only controversy . . . that is ripe for decision at this time—should the case be arbitrated or tried in court?*" *Id.* at 855 [emphasis added].

An order in admiralty denying a stay pending arbitration has also been held non-appealable under 28 U.S.C. § 1291, on the grounds that the order was not "final" within

the meaning of that section. *Schoenamsgruber v. Hamburg American Line, supra.* Petitioners submit, however, that an admiralty order granting or denying a stay pending arbitration forces upon the parties either a superfluous trial or a superfluous arbitration, all at a tremendous expenditure of time and money. Such an order should fall within "that small class [of orders] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949).

The unavailability of prompt review of an admiralty order denying a stay pending arbitration undercuts the utility of arbitration by frustrating its central purpose—expedience. Expedient resolution of disputes is of particular concern in international commerce. This concern is reflected in the fifty-nation Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the thrust of which is to recognize not only the desirability of arbitration as an expedient device for conflict resolution, but also the desirability of uniform access to arbitration among subscribing nations. Our national commitment to these principles is reflected in Congress' accession to the Convention in 1970.

The desirability of uniform treatment of commercial remedies in multi-national transactions has also been recognized by this Court. "A parochial refusal by the courts of one country to enforce an international arbitration agreement would not only frustrate these purposes, but would invite unseemly and mutually destructive jockeying

by the parties to secure tactical litigation advantages." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 516-17 (1974). Judicial actions which subvert carefully drawn international agreements regarding commercial remedies "surely damage the fabric of international commerce and trade, and imperil the willingness and ability of businessmen to enter into international commercial agreements." *Id.* at 517 [footnote omitted]. As Mr. Chief Justice Burger observed in *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), "[t]he expansion of American business and industry will hardly be encouraged if, notwithstanding solemn contracts, we insist on a parochial concept that all disputes must be resolved under our laws and in our courts. . . . We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts." *Id.* at 9.

The question presented in the *Rederi* petition for certiorari should be reconsidered in light of these subsequent developments. This country's implementation of the Convention, and the anti-parochial stance taken in *Zapata* and *Scherk*, vindicate the analysis of Mr. Justice Black in *Rederi:* an admiralty order denying a stay pending arbitration should be promptly appealable, either under 28 U.S.C. § 1291 as a final order, or under 28 U.S.C. § 1292(a)(1) as an interlocutory order amounting to an injunction.

The Convention applies to the bills of lading at issue in this case because they evince international transactions, and because they are "bills of lading issued by a water carrier." 9 U.S.C. §§ 1, 2, 202. Congress has directed that

the Convention "shall be enforced in U.S. Courts." 9 U.S.C. § 201. The Convention, in Article II, provides:

> 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

These provisions, together with the rest of the Convention, are manifestly intended to enhance and protect the utility of arbitration agreements in international commercial transactions. As this Court has observed:

> The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries. . . . In their discussion of [Article II], the delegates to the Convention voiced frequent concern that courts of signatory countries in which an agreement to arbitrate is sought to be enforced should not be permitted to decline enforcement of such agreements on the basis of parochial views of their desirability or in a manner that would diminish the mutually binding nature of the agreements.

Scherk v. Alberto-Culver Co., 417 U.S. at 520, n. 15 [citations omitted].

Petitioners submit that for the Convention's purpose to be realized, denial of a stay pending arbitration must be open to prompt appeal and review. An arbitration agreement is worthless if arbitrability is determined only after years of litigation and appeal. As one long-time commentator on the Convention has observed, "The Convention is

directed to the competent authority, presumably the courts, of each contracting state and *leaves much of its effectiveness to the procedures of those courts* and to the particular agreement between the parties." Quigley, *Convention on Foreign Arbitral Awards*, 58 A.B.A.J. 821, 822 (1972) [emphasis added]. Without prompt review, implementation or frustration of Article II's requirements and attendant commercial expectations of uniformity is effectively left to the hundreds of federal district judges in all their unpredictable variety.

Finally, petitioners point out that the district court's denial of petitioners' motion was based on a provision of the United States Carriage of Goods by Sea Act (COGSA), 46 U.S.C. §§ 1300 *et seq.* COGSA is the 1936 codification of an international convention to which the United States later became a signatory. Chapter 2 of the Federal Arbitration Act is the 1970 implementation of another international convention to which the United States is a signatory. To the extent the Federal Arbitration Act conflicts with COGSA, the former must prevail because it is later in time. *Cook v. United States*, 288 U.S. 102 (1933); *Whitney v. Robertson*, 124 U.S. 190 (1888). Accordingly, no provision of COGSA should be construed to vitiate the unequivocal provisions of Chapter 2 of the Federal Arbitration Act.

If the United States is truly to shed itself of the parochialism recognized as undesirable in *Zapata* and *Scherk*, and if the United States is to abide by the international obligation which it undertook in acceding to the arbitration convention, admiralty orders denying stay pending arbitration should be promptly appealable.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: November 5, 1979.

Respectfully submitted,

THOMAS J. MCKEY
of Bogle & Gates
Counsel for Petitioners

David R. Millen
Jeffrey R. Masi
On the Petition

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PACIFIC LUMBER & SHIPPING COMPANY, INC., HEIDNER INTERNATIONAL CORP., R. W. EXPORT LTD., INTERCONTINENTAL CORPORATION, *et al.* *Plaintiffs/Appellees,* v. STAR SHIPPING A/S, *Defendant/Appellant,* and M.S. STAR CLIPPER, *Defendant,* and BUCHANAN SHIPPING COMPANY, *Claimant/Appellant.*	No. 79-4225 D.C. #CV79-140 WTB Western Washington (Seattle) ORDER

Before: BROWNING and WALLACE, Circuit Judges.

Upon due consideration, the court issues the following order:

(1) the appeal is dismissed for lack of an appealable order;

(2) the court declines to treat the appeal as a petition for writ of mandamus; and

(3) appellee's motion for an extension of time in which to file its brief is denied as moot.

FILED
August 14, 1979
EMIL E. MELFI, JR.
Clerk, U.S. Court of Appeals
No. 79-4225

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACIFIC LUMBER & SHIPPING CO., INC., *et al.*, *Plaintiffs*, v. STAR SHIPPING A/S and the M. S. STAR CLIPPER, *Defendants*, BUCHANAN SHIPPING CO., *Claimant*.	In Admiralty In Rem and in Personam No. C79-140 ORDER

FILED IN THE
UNITED STATES DISTRICT COURT
Western District of Washington
FEBRUARY 26, 1979
JOE R. ROMAINE, *Clerk*
By .....*Deputy*

The motions of defendant Star Shipping A/S and the claimant of the M.S. STAR CLIPPER to shorten time for hearing of motion to quash notice of deposition, to shorten

time for hearing of motion for stay of action pending arbitration, to quash notice of depositions and for protective order, and for stay of action pending arbitration, were heard by the Court on February 13 and 15, 1979. The Court has considered the arguments of counsel and the briefs and affidavits of Thomas McKey and Carol Nett dated February 14, 1979 and plaintiffs' brief and affidavits of David Danielson (including its exhibits) dated February 15, 1979 and the affidavit of Gerald Strand dated February 14, 1979. At issue is the effect of the following clause which is on the face of all of the applicable bills of lading:

> ALL DISPUTES ARISING UNDER THIS BILL OF LADING SHALL BE SETTLED IN ACCORDANCE WITH THE PROVISIONS OF THE ARBITRATION ACT OF 1950 IN LONDON. THE AWARD OF THE ARBITRATORS OR UMPIRE TO BE FINAL AND BINDING UPON BOTH PARTIES.

The affidavit of Carol Nett establishes that the so-called "London arbitration clause" was inserted in defendant Star Shipping A/S's Mediterranean bills of lading at Star's direction. The affidavits of Nett, Gerald Strand and David Danielson indicate that the "London arbitration clause" was not negotiated or discussed with the shippers of cargo transported on vessels owned or chartered by Star. From the materials presented to the Court, there is no indication that the shippers ever had an option to have that clause deleted. Further, the affidavits of Strand and Danielson illustrate that the bills of lading which were identified in those affidavits were not received by the shippers in their completed form until after the STAR CLIPPER sailed from Coos Bay.

These bills of lading are contracts of adhesion, and I find that the "London arbitration clause" was not freely negotiated between the parties. That clause is a foreign forum clause. This case is governed by the provisions of the Carriage of Goods by Sea Act (COGSA) 46 U.S. Code, §1300, et seq. and violates §1303(8) of COGSA. *Mitsui & Co., Ltd., et al. v. M/V GLORY RIVER, et al.*, No. C-78-259B, (W.D. Wn. Aug. 30, 1978); *Indussa Corporation v. S.S. RANBORG*, 377 F.2d 200 (2d Cir. 1967); *Northern*

Assurance Co. Ltd. v. M/V CASPAN CAREER, 1977 A.M.C. 421 (N.D. Cal. 1977). If ocean carriers were allowed to unilaterally select the forum for the resolution of cargo claims it would be an invitation to carriers to select forums having no relationship to the ports of loading or discharge and the carriers would be at liberty to select forums that might not fairly enforce COGSA.

Accordingly, the Court rules as follows:

1. The motions of Star Shipping A/S and the claimant to shorten time for hearing of motion to quash notice of deposition and to shorten time for hearing of motion to stay of action pending arbitration are granted.

2. The motions of Star Shipping A/S and the claimant for stay of action pending arbitration and to quash notice of depositions and for protective order are denied.

DATED this 23rd day of February, 1979.

[signature] W. T. BEEKS
UNITED STATES DISTRICT JUDGE

Presented by:
LANE, POWELL, MOSS & MILLER

[signature]

David Danielson, Of
Attorneys for Plaintiffs

APPENDIX B

FEDERAL ARBITRATION ACT, CHAPTER 1, 9 U.S.C. §§ 1, 2, 3, 8

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

July 30, 1947, c. 392, 61 Stat. 670.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

July 30, 1947, c. 392, 61 Stat. 670.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration

under an agreement in writing for such arbitrations, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

July 30, 1947, c. 392, 61 Stat. 670.

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

July 30, 1947, c. 392, 61 Stat. 672.

APPENDIX C
CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Reservation

"The United States of America will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of only those awards made in the territory of another Contracting State."

"The United States of America will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the United States."

[Note: Norway and England are signatories to the Convention.]

FEDERAL ARBITRATION ACT, CHAPTER 2, 9 U.S.C. §§ 201-203, 206-208

§ 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.

§ 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.

§ 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 692.

§ 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.

§ 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.

§ 208. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

Added Pub.L. 91-368, § 1, July 31, 1970, 84 Stat. 693.